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19035 - A, B, C

0100419024

October 31, 1994

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Dear Secretary:

I have enclosed an original and one copy of each of the following documents, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code:

(1) Conditional Sale Agreement dated as of October 15, 1994, between Thrall Car Manufacturing Company, as Builder or Vendor, and BA Leasing & Capital Corporation, as Owner. This document is a conditional sale agreement, a primary document.

(2) Agreement and Assignment dated as of October 15, 1994, between Thrall Car Manufacturing Company, as Builder, and Penn Mutual Life Insurance Company, as Investor. This document is a secondary document; the primary document to which it is connected is document (1) above filed herewith.

(3) Lease of Railroad Equipment dated as of October 15, 1994, between Alabama Power Company, as Lessee, and BA Leasing & Capital Corporation, as Lessor. This document is a secondary document; the document to which it is connected is document (1) above filed herewith.

(4) Assignment of Lease and Agreement dated as of October 15, 1994, between BA Leasing & Capital Corporation, as Owner, and Penn Mutual Life Insurance Company, as Investor, which includes the Consent and Agreement of Alabama Power Company, as Lessee. This document is a secondary document; the document to which it is connected is document (1) above filed herewith.

The names and addresses of the parties to these documents are as follows:

1710 SIXTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
(205) 251-8100

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WASHINGTON, D.C. 20036
(202) 296-0387

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- (a) Owner/Lessor: BA Leasing & Capital Corporation
Four Embarcadero Center
Suite 1200
San Francisco, CA 94111
- (b) Lessee: Alabama Power Company
600 North 18th Street
Birmingham, Alabama 35203
- (c) Investor/Assignee
of Vendor and Owner: Penn Mutual Life Insurance
Company
600 Dresher Road
Horsham, PA 19044-2267
- (d) Builder/Vendor: Thrall Car Manufacturing Company
2521 State Street
Chicago Heights, Illinois 60411

A description of the equipment covered by the documents
filed herewith is as follows:

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
Thrall 116-Ton Aluminum Body, Steel Under- Frame Coal Hopper Cars	HTS	250 Units	JHMX 94001- 94250
Carsets of Fabricated Car Parts	---	10 Carsets	---

A fee of \$54.00 is enclosed. Please return the originals
and any extra copies not needed by the Commission for recordation
to the individual submitting these documents or to the undersigned.

A short summary of each of the documents filed herewith
(corresponding to the numbering thereof in the first paragraph of
this transmittal letter) to appear in the index follows:

(1) Conditional Sale Agreement dated as of October 15,
1994, between Thrall Car Manufacturing Company (2521 State Street,
Chicago Heights, Illinois 60411), as Builder or Vendor, and BA

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Leasing & Capital Corporation (Four Embarcadero Center, Suite 1200, San Francisco, California 94111), as Owner, covering 250 Thrall 116-Ton Aluminum Body, Steel Underframe Coal Hopper Cars (Lessee (Alabama Power Company) Identification Numbers JHMX 94001-94250, inclusive; AAR Mechanical Designation HTS) and 10 Additional Carsets of Fabricated Car Parts.

(2) Agreement and Assignment dated as of October 15, 1994, between Thrall Car Manufacturing Company (2521 State Street, Chicago Heights, Illinois 60411), as Builder, and Penn Mutual Life Insurance Company (600 Dresher Road, Horsham, Pennsylvania 19044-2267), as Assignee, assigning certain of Builder's right, title and interest in and to the Conditional Sale Agreement dated as of October 15, 1994, between Builder and BA Leasing & Capital Corporation (Four Embarcadero Center, Suite 1200, San Francisco, California 94111), as Owner, covering 250 Thrall 116-Ton Aluminum Body, Steel Underframe Coal Hopper Cars (Lessee (Alabama Power Company) Identification Numbers JHMX 94001-94250, inclusive; AAR Mechanical Designation HTS) and 10 Additional Carsets of Fabricated Car Parts.

(3) Lease of Railroad Equipment dated as of October 15, 1994, between Alabama Power Company (600 North 18th Street, Birmingham, Alabama 35203), as Lessee, and BA Leasing & Capital Corporation (Four Embarcadero Center, Suite 1200, San Francisco, California 94111), as Lessor, covering 250 Thrall 116-Ton Aluminum Body, Steel Underframe Coal Hopper Cars (Lessee (Alabama Power Company) Identification Numbers JHMX 94001-94250, inclusive; AAR Mechanical Designation HTS) and 10 Additional Carsets of Fabricated Car Parts.

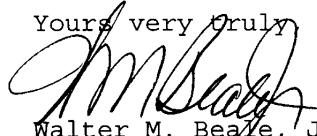
(4) Assignment of Lease and Agreement dated as of October 15, 1994, between BA Leasing & Capital Corporation (Four Embarcadero Center, Suite 1200, San Francisco, California 94111), as Owner, and Penn Mutual Life Insurance Company (600 Dresher Road, Horsham, Pennsylvania 19044-2267), as Investor, assigning certain of the Owner's rights, titles and interests under a Lease of Railroad Equipment dated as of October 15, 1994, between BA Leasing & Capital Corporation (Four Embarcadero Center, Suite 1200, San Francisco, California 94111), as Owner and Lessor, and Alabama Power Company (600 North 18th Street, Birmingham, Alabama 35203), as Lessee, covering 250 Thrall 116-Ton Aluminum Body, Steel Underframe Coal Hopper Cars (Lessee (Alabama Power Company) Identification Numbers JHMX 94001-94250, inclusive; AAR Mechanical Designation HTS) and 10 Additional Carsets of Fabricated Car Parts.

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Thank you very much for your assistance.

Yours very truly

A handwritten signature in dark ink, appearing to read "W. Beale, Jr.", written over the typed name.

Walter M. Beale, Jr.
Counsel to Alabama Power Company

WMBjr/mjs
Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

10/31/94

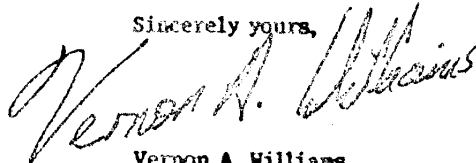
OFFICE OF THE SECRETARY

Walter M. Beale, Jr.
Balch & Bingham
Post Office Box 306
Birmingham, Alabama 35201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/31/94 at 11:05AM, and assigned recordation number(s). 19035-A, B and C

Sincerely yours,



Vernon A. Williams
Secretary

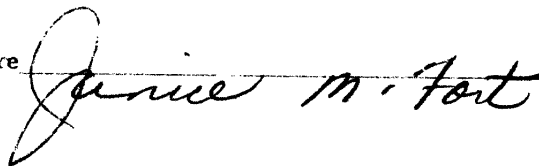
Enclosure(s)

(0100419024)

63.00

\$_____ The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



19035

001

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CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1994

Between

THRALL CAR MANUFACTURING COMPANY

And

BA LEASING & CAPITAL CORPORATION

Filed with the Interstate Commerce Commission pursuant to 49
U.S.C. § 11303 on October 31, 1994, at _____ a.m., recordation
number _____.

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of October 15, 1994 between THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Builder" or "Vendor" as the context may require, as more particularly set forth in Section 1.3 hereof), and BA LEASING & CAPITAL CORPORATION, a California corporation ("Owner").

WHEREAS the Builder has agreed to manufacture, sell and deliver to the Owner, and the Owner agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment");

WHEREAS the Owner is entering into a Lease of Railroad Equipment dated as of the date hereof ("Lease") with ALABAMA POWER COMPANY, an Alabama corporation ("Lessee"), substantially in the form annexed hereto as Annex C; and

WHEREAS PENN MUTUAL LIFE INSURANCE COMPANY, a Pennsylvania mutual life insurance company ("Investor"), is the investor under a Participation Agreement dated as of the date hereof ("Participation Agreement"), among the Lessee, the Owner and the Investor. (Capitalized terms used herein without definition shall have the meanings specified in the Participation Agreement.)

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1

ASSIGNMENT; DEFINITIONS

1.1 Contemplated Sources of Purchase Price; CSA Assignment. The parties hereto contemplate that the Owner will furnish 30.94777% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Investor pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Investor.

1.2. Lease Assignment. The Owner will assign to the Investor, as security for the payment and performance of all the Owner's obligations hereunder, all right, title and interest of the Owner with certain exceptions in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which is manufacturing and selling the Equipment and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement,

means, before any such assignment, the Builder and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

ARTICLE 2

CONSTRUCTION AND SALE

Pursuant to this Agreement and the Purchase Order (as hereinafter defined), the Builder shall manufacture the Equipment at its plant described in Annex B hereto and will sell and deliver the Equipment to the Owner, and the Owner will purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be manufactured in accordance with the Purchase Order (as hereinafter defined) and the specifications therein and in accordance with such modifications thereof as may be agreed upon by the Builder, the Owner and the Lessee (which specifications and modifications, if any, are hereinafter called "Specifications"). The Builder represents and warrants that each such unit delivered subsequent to the First Delivery Date will be new railroad equipment when delivered to the Owner and the original use thereof shall commence with the Owner.

ARTICLE 3

INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Owner at such place or places specified in Annex B hereto in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or the occurrence of any event of default (as described in Section 16.1 hereof), or event which, with the lapse of time and/or demand, would constitute such an event of default, unless it has been assured to its satisfaction that it will receive the full Purchase Price (as defined in Section 4.1 hereof) thereof. The Builder agrees not to deliver any unit of Equipment to the Owner hereunder, and the Owner shall have no obligation to pay for any such unit, (a) until it receives notice from the Investor or its counsel that the conditions contained in Section 6 of the Participation Agreement have been met and from the Owner or its counsel that the conditions contained in Section 7 of the Participation Agreement have been met or (b) following receipt of written notice from the Owner or the Investor of the commencement of any such proceedings or the occurrence of any such

event, as aforesaid, until such time as such written notice may be canceled by a further written notice.

3.2. Force Majeure. The Builder's obligation as to time of delivery is subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of any government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor shortages, epidemics, quarantine restrictions, utility shortages or curtailments, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials, delays of carriers or subcontractors or late design changes requested by the Lessee.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to Section 3.1 hereof, any Equipment as to which a Closing does not occur hereunder for any reason, and any Equipment not delivered and accepted hereunder on or before December 31, 1994 (whether because of delays of the nature described in Section 3.2 hereof or otherwise), shall be excluded from this Agreement and the Owner shall be relieved of its obligations to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder and the Owner shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Section 3.3 or pursuant to Section 4.1 hereof, the Lessee will be obligated pursuant to Section 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with and subject to the terms of its prior contractual arrangements with the Builder relating to the Equipment consisting of that certain Railcar Purchase Agreement dated September 8, 1994, between the Lessee and the Builder, and the other documents listed therein (collectively, "Purchase Order"), unless arrangements satisfactory to the Builder have otherwise been made for financing such units, and the Owner will reassign, transfer and set over to or upon the order of the Lessee all the right, title and interest of the Owner in and to the units so excluded and the Purchase Order to the extent relating thereto. The delivery to and acceptance by or on behalf of the Owner of any unit of Equipment so excluded shall be ineffective, ab initio, to create in or transfer to the Owner any legal or beneficial right or interest in such unit or (except as provided in Section 4.1 hereof) to impose on the Owner any liability, obligation or responsibility with respect thereto. The Owner agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit so excluded from this Agreement.

3.4. Inspection. Rights to inspection and approval of the Equipment during manufacture and the Builder's obligations with respect thereto shall be as provided in the Purchase Order. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to, or exceeds, the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder a certificate of acceptance substantially in the form of Annex E hereto ("Certificate of Acceptance") stating, among other things, that such unit or units have been inspected and accepted on behalf of the Owner and are marked in accordance with Section 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its obligations and warranties under the terms of the Purchase Order. By Section 2 of the Lease, the Owner is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its agents, as aforesaid) pursuant to Section 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Owner.

3.5. Builder Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance by the Owner of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its obligations and warranties under the terms of the Purchase Order.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices include storage, freight charges to the place of delivery and the cost of the inspection described in Section 3.4 hereof payable to the Builder and are subject to such increase or decrease as is agreed to by the Builder, the Owner and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased and as set forth in the Builder's invoice or invoices. If on any Closing Date (as hereinafter defined in Section 4.2) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Annex A hereto, the Builder (and any assignee of the Builder) and the Owner will enter into an agreement excluding from

this Agreement such unit or units of Equipment then proposed to be settled for, in the inverse order of their delivery pursuant to Article 3 hereof, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Owner shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of Equipment as is provided in Item 2 of Annex A hereto. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee by at least five days' written notice thereof with the concurrence of the Owner and the Investor. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent by the Lessee to the Builder, the Investor and the Owner. At least five days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to the Owner the invoice or invoices for the Equipment to be settled for, certified as to correctness by the Lessee. The closing on each Closing Date shall take place at the offices of Balch & Bingham in Birmingham, Alabama. The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in San Francisco, California or Birmingham, Alabama are authorized or obligated to remain closed.

4.3. Indebtedness of Owner to Vendor. Subject to the terms of this Agreement, the Owner hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment to be settled for hereunder, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 30.94777% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in various installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this Section (said portion of the Purchase Price payable in installments under this subparagraph (b) being hereinafter called "CSA Indebtedness") (the principal of the CSA Indebtedness not to exceed the Maximum CSA Indebtedness specified in Annex A hereto).

4.4. CSA Indebtedness; Payment Dates; Interest.

(a) The installments of the CSA Indebtedness shall be payable on the dates set forth in Schedule I hereto. The

unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8.53% per annum and such interest shall be payable on the dates set forth in Schedule I hereto. The dates for the payment of installments of CSA Indebtedness are hereinafter called "Payment Dates" and the dates for the payment of interest on the CSA Indebtedness are hereinafter called "Interest Payment Dates". The rate of interest payable on the CSA Indebtedness is hereinafter called the "Debt Rate". The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next business day, and no interest shall be payable thereon from and after the scheduled date for payment thereof to such next business day.

4.5. Calculation of Interest. Interest payable under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. Overdue Rate. The Owner will pay interest, to the extent legally enforceable, at the per annum rate of 2% plus the Debt Rate ("Overdue Rate") upon all amounts including premium, if any, and interest remaining unpaid on the CSA Indebtedness after such amounts shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment; Prepayments.

(a) All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in immediately available funds as provided in Section 4.3 above. The Owner shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to April 1, 1997, except as referred to in subsection (b) of this Section 4.7. On April 1, 1997, and on any Payment Date thereafter the CSA Indebtedness may be prepaid in full at the percentages of the then outstanding principal amount thereof provided in subsection (c) of this Section 4.7.

(b) The CSA Indebtedness shall also be subject to payment as provided in Articles 7 and 17 hereof and Section 10 of the Lease

Assignment, in each case at any time and without premium except in connection with a Termination pursuant to Section 7.2 hereof.

(c) The applicable prepayment premiums on the CSA Indebtedness and the percentages referred to in subsection (a) of this Section 4.7 shall be as provided below:

<u>Year of Prepayment</u>	<u>Percentage</u>
1997	107.39
1998	106.82
1999	106.26
2000	105.69
2001	105.12
2002	104.55
2003	103.98
2004	103.41
2005	102.84
2006	102.27
2007	101.71
2008	101.14
2009	100.57
2010 or thereafter	100.00

4.8. Liability of Owner Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.8), but not limiting the effect of Article 23 hereof, the liability of the Owner or any assignee of the Owner for all payments to be made by it under and pursuant to this Agreement (with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the amount payable pursuant to the proviso to Section 13.3 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Owner only to the extent that the Owner or any assignee of the Owner shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Owner shall have no individual liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner or any assignee of the Owner. In addition, the Vendor agrees that the Owner

(i) makes no representation or warranty as to, and is not responsible for the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto), insofar as it relates to the Lessee or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(x) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner or any assignee of the Owner at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or Termination (as defined in Section 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under Section 13 or any other provision of the Lease (except the Excluded Payments and Rights as defined in Section 1 of the Lease Assignment) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(y) at any other time only that portion of the amounts referred to in clauses (a) and (b) of the foregoing section (x) (not including any amounts of Excluded Payments and Rights or any amounts paid by the Lessee to the Owner as reimbursement of sums paid by the Owner on account of prior defaults under Section 13.1(A) of the Lease) as are indefeasibly received by the Owner or any assignee of the Owner and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Termination) and/or interest thereon then due and payable pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in clauses (a) and (b) of the foregoing section (x) which were received by the Owner or any assignee of the Owner prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Termination) and/or

interest thereon due and payable on the date on which amounts with respect thereto received by the Owner or any assignee of the Owner were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor to Retain Security Interest; Accessories are Part of Equipment. The Vendor shall and hereby does retain, and the Owner shall and does hereby grant in favor of the Vendor, a security interest in the Equipment and all proceeds thereof until the Owner shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner), and, subject to such security interest, ownership of the Equipment shall be and remain in the Owner subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit or (ii) the cost of which is included in the Purchase Price of such unit or (iii) in the course of ordinary maintenance of such unit or (iv) which are required in order to enable such unit to comply with Section 10.1 of the Lease, shall constitute accessions to the Equipment and shall be subject to the security interest granted or retained hereunder and to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner without further transfer or action on the part of the Vendor or the Owner. However, the Vendor, if so requested by the Owner at that time, will at the Owner's sole cost

and expense (a) execute an instrument releasing its security interest in the Equipment to the Owner or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner to the Equipment and (c) pay to the Owner any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided.

ARTICLE 6

TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Owner agrees to pay, and to indemnify and hold the Vendor, the Investor and their respective affiliates, successors, assigns, directors, officers, employees, agents and servants ("Indemnified Persons") harmless on an After-Tax Basis (as defined in Section 12.1 of the Lease) from, all taxes (including, without limitation, sales, personal property, transfer, fuel, leasing, use, registration, occupational, and excise taxes), assessments, withholdings, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Vendor, the Investor, the Lessee or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to any units of the Equipment or any part thereof, the manufacture, purchase, ownership, delivery, leasing, subleasing, possession, use, operation, transfer of title, sale, return or other disposition thereof, the indebtedness with respect thereto, the rentals, receipts or earnings arising therefrom, this Agreement, the Participation Agreement, the Lease, the CSA Assignment, the Lease Assignment or any other Document, or any payment made pursuant to any such agreement or otherwise with respect to or in connection with the transactions contemplated by the Documents (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however, with respect to each Indemnified Person: (i) Taxes (however denominated) (other than Taxes in the nature of sales, use, rental, property or ad valorem taxes) based or imposed on, or measured by, the net income of such Indemnified Person (or franchise taxes imposed on such Indemnified Person to the extent that they are taxes in lieu of net income taxes) by the United States or by any state or political subdivision thereof in which such Indemnified Person's principal place of business is located or in which such Indemnified Person is subject to net

income tax by reason of engaging in business in such jurisdiction (other than if the Indemnified Person is treated as so engaged by reason of the leasing of units of the Equipment located therein or the activities or presence of Lessee, or the making of payment by Lessee from such jurisdiction); provided that Taxes of any foreign country or subdivision thereof incurred as a result of the Indemnified Person being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the Indemnified Person is entitled to a credit against its United States Federal income taxes except to the extent such taxes relate to the location or use of the Equipment in such foreign jurisdiction or presence of the Lessee in such jurisdiction; (ii) Taxes on any items of tax preference or any minimum tax of such Indemnified Person; (iii) any Taxes imposed on an Indemnified Person as a direct result of a voluntary or involuntary transfer or other disposition by such Indemnified Person (other than in connection with the exercise of any remedy for an event of default which shall have occurred and be continuing at the time of such transfer or other disposition and other than in connection with the exercise of any purchase option by the Lessee or as a result of the act or omission of the Lessee) or any transfer or disposition by such Indemnified Person resulting from bankruptcy or other proceedings for the relief of debtors in which such Indemnified Person is the debtor, whether voluntary or involuntary, of any interest in any unit of the Equipment or interest in rentals under the Lease or payments under this Agreement; (iv) Taxes imposed by any jurisdiction to the extent that such Taxes would not have been imposed on such Indemnified Person but for activities in such jurisdiction by such Indemnified Person commencing after the Closing Date and unrelated to the transactions contemplated hereby but only to the extent such Taxes are attributable to such unrelated activities; (v) Taxes to the extent resulting from the willful misconduct or gross negligence of such Indemnified Person; (vi) Taxes in the nature of franchise taxes (other than in the nature of sales, use, rental, property or ad valorem taxes), capital stock taxes, net worth taxes or taxes on doing business, except to the extent such Taxes are related to or result from the transactions contemplated by the Documents; (vii) Taxes incurred by such Indemnified Person as a result of its own bankruptcy; (viii) Taxes which are imposed with respect to the Equipment for any period occurring after the termination of the Lease and the return of the Equipment to the Owner in accordance therewith and payment of all amounts required to be paid thereunder; and (ix) Taxes which are gross income or gross receipts Taxes, unless such Taxes are imposed by reason of the use, location, or presence of the Equipment in, or the presence or activities of the Lessee in, or the making of payments from, the jurisdiction imposing such Taxes or such Taxes are in the nature of sales, use, property, ad valorem, value added or rental taxes; provided, however, that the Owner shall not be required to pay any Taxes during the period it may be contesting the same in the manner

provided in, and subject to the conditions of, Section 6.2 hereof. The Owner will be responsible for making timely remittances of all Taxes indemnified against hereunder to the appropriate governmental unit, and will file timely with each appropriate governmental unit, all returns, statements and reports legally required with respect thereto. In the event the Owner is not itself permitted by law or practice to remit the Taxes directly to the governmental unit, the applicable Indemnified Person shall remit to the governmental unit any such Taxes and Owner shall reimburse such Indemnified Person for such Taxes together with interest thereon at the rate borne by the CSA Indebtedness from the time of such payment to the time of such reimbursement.

The Owner shall, whenever reasonably requested by the Indemnified Person, submit to the applicable Indemnified Person copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to such Indemnified Person, of the Owner's performance of its duties under this Article 6. The Owner shall also furnish promptly upon request such data as the Indemnified Person reasonably may require to permit such Indemnified Person's compliance with the requirements of any taxing jurisdiction.

6.2. Claims, Contests; Refunds. If claim is made against any Indemnified Person for any Taxes indemnified against under this Article 6, such Indemnified Person shall promptly notify the Owner in writing; provided that the failure of such Indemnified Person to give such notice shall not release the Owner from any indemnification obligation under this Article 6 unless the Owner shall be materially and adversely affected thereby. If reasonably requested by the Owner in writing, such Indemnified Person shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner, contest (or at such Indemnified Person's election and if permitted by law, permit the Owner to contest in the name of such Indemnified Person) in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. Any contest permitted pursuant to the preceding sentence shall be controlled by the Owner unless the contest is brought in the name of the Indemnified Person or affects other non indemnified taxes of the Indemnified Person, in which case the Indemnified Person shall control the contest; provided, however, that, in the case of taxes the contest of which is to be controlled by the Indemnified Person, the Indemnified Person shall consult with and take such actions reasonably requested by the Owner in connection with such contest and provided such actions do not otherwise adversely affect the

Indemnified Person; and provided, further, that the Owner may commence or continue any such contest with respect to Taxes that the Investor has determined not to contest in accordance with this Section 6.2 only upon making reasonably adequate provision to ensure that funds will be subsequently available for the payment of such Taxes if such contest shall be unsuccessful. In no event shall the Owner have any responsibility in connection with the settlement or other compromise of any claim effected without its prior written consent. Notwithstanding the foregoing, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Investor in any such proceeding or action) unless (i) in the reasonable opinion of the Investor, such contest or the nonpayment of the Taxes would not materially and adversely affect the title, property or rights of the Investor hereunder, or, if there would be such an adverse effect, the Owner provides a bond or other security reasonably satisfactory to the Investor, (ii) if the Indemnified Person contests the Tax by making payment thereof and conducting a refund proceeding, the Owner has advanced to such Indemnified Person as an interest-free loan and with no additional tax cost to such Indemnified Person an amount equal to the Taxes so paid and (iii) the Indemnified Person has received an opinion of counsel selected by it that there exists a "reasonable basis" to contest such Taxes. The Owner agrees to give the Investor reasonable notice of such contest prior to the commencement thereof. Notwithstanding the foregoing, the Indemnified Person shall not be required to contest, or to continue to contest, the Tax if such Indemnified Person waives its right to indemnification hereunder with respect to the Tax in issue. The Indemnified Person shall reasonably cooperate with the Owner with respect to any contest pursuant to this Section 6.2, but shall not otherwise be required to provide access to or copies of its books and records. If the Investor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner in connection with any such contest or an amount representing interest thereon, the Investor shall pay the Owner the amount of such refund or interest net of expenses; provided, however, that no such payment shall be required if an event of default set forth in Section 16.1 hereof or an event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing and the amount of such payment shall in no event exceed all amounts previously paid by the Owner to the appropriate Indemnified Person under this Section 6 reduced by all prior payments by such Indemnified Person to the Owner pursuant to this sentence. Any disallowance or reduction of such refund subsequent to the year of realization by the Investor shall be treated as a Tax subject to indemnification pursuant to the provisions of this Article 6.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Owner under or arising out of this Article 6, the Owner will, where

permitted to do so under applicable rules and regulations, make and timely file such reports and returns including exemption certificates or affidavits with respect to any sales or use tax, in such manner as to show the interest of the Vendor in the Equipment as shall be satisfactory to the Vendor or, where not so permitted, will notify the Vendor of such requirement and will prepare and deliver such reports to the Vendor within a reasonable time prior to the time such reports are to be filed.

6.4. Withholding. Notwithstanding anything herein to the contrary, all amounts received by the Investor which are furnished by the Owner shall be free of withholdings of any nature whatsoever, and in the event that any withholding is required, the Owner shall pay an additional amount such that the net amount actually received by the Investor (or such other person entitled to receive such amounts under the Documents) after such withholding will equal the full amount of the payment then due. If the Owner has paid any such additional amount and the corresponding withholding tax is not indemnifiable by the Owner pursuant to Section 6.1, the Owner shall notify in writing the Indemnified Person with respect to which such tax was withheld from payments to such person of the amount of such additional payment and provide the Indemnified Person a receipt or other document appropriately evidencing the payment of such withholding tax. Within thirty (30) days of receipt of such notice and documentation, such Indemnified Person shall repay to the Owner such additional amount together with interest thereon from the date of the Owner's payment to the date of repayment at a rate equal to the Overdue Rate during such period.

6.5. Survival. All the obligations of the Owner under this Article 6 shall survive and continue notwithstanding payment in full of all amounts due under this Agreement or the termination of the Lease. Payments due from the Owner under this Article 6 shall be made directly to the party indemnified.

ARTICLE 7

MAINTENANCE; TERMINATION AND CASUALTY OCCURRENCES

7.1. Maintenance. Subject to the limitations contained in Article 23 hereof, the Owner shall, at its own cost and expense, maintain and keep each unit of the Equipment as required by Section 11.1 of the Lease.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to Section 7.9 or clause (i) of Section 16.3(a) of the Lease ("Termination"), or any unit of Equipment shall suffer a Casualty Occurrence (as defined in Section 7.1 of the Lease), the Owner shall, promptly after it shall have received notice from the Lessee or otherwise been informed of a

Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in Section 7.1 of the Lease) with respect to such a Casualty Occurrence, or on the Termination Date (as defined in Section 7.9 of the Lease) or the applicable purchase date pursuant to clause (i) of Section 16.3(a) of the Lease, as the case may be, with respect to a Termination (each such date hereinafter called a "Settlement Date"), the Owner shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Section 7.4 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon, unless the Lessee complies with the provisions of the last paragraph of Section 7.1 of the Lease, in which case no payment under this clause (i) shall be required, and (ii) in the case of a Termination, a sum equal to the Termination Value (as defined in Section 7.5 hereof) of all units subject to the Lease as of such Settlement Date, together with an amount equal to accrued interest and the applicable prepayment premium (if any) thereon provided for in Section 4.7 hereof. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay, without penalty or premium except in the case of a Termination as aforesaid, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid.

7.3. Obligations Upon Payment of Casualty or Termination Value. Upon payment by the Owner to the Vendor of the Casualty Value or Termination Value of any unit of the Equipment in accordance with Section 7.2 hereof, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Lessee without further transfer or action on the part of the Vendor or the Owner, except that the Owner and the Vendor, if requested by the Lessee, will execute and deliver to the Lessee, at the expense of the Lessee, an appropriate instrument confirming such passage to the Lessee of all the Owner's and the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Lessee may make clear upon the public records the title of the Lessee to such unit.

7.4. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in Section 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this Section and Section 7.5, each payment of the Purchase Price of any Equipment

made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.5 Termination Value. The Termination Value of any unit of Equipment subject to the Lease shall be equal to the Casualty Value thereof.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner; provided, however, that no event of default shall have occurred and be continuing hereunder and the Owner shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the year 1995, the Owner shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in Section 8 of the Lease. The Vendor shall have the right at its sole cost and expense, by its agents, to inspect the Equipment and the Owner's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Owner will cause each unit of the Equipment to be kept numbered and marked as provided in Section 5 of the Lease. The Owner will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings

which may be removed, obliterated, defaced or destroyed. The Owner will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in Section 10.1 hereof, the Owner will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Owner will comply, and will cause every lessee or user of the Equipment to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all applicable rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect, or failure to comply with them would materially and adversely affect, the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any unit of the Equipment, the Owner will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Owner or the Lessee may in good faith contest the validity or application of any such law or rule in any reasonable manner if (i) in the reasonable opinion of the Vendor, such contest will not materially and adversely affect the property or rights of the Vendor under this Agreement or (ii) the Owner or the Lessee provides a bond or other security reasonably satisfactory to the Vendor.

ARTICLE 12

POSSESSION AND USE

12.1. Possession and Use of Equipment by Owner. The Owner shall be entitled, from and after delivery of the Equipment by the Builder to the Owner, to the possession of the Equipment and the use thereof (as provided in the Lease), but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Owner simultaneously is leasing the Equipment to the Lessee as provided in the Lease and the rights of the Lessee and its permitted assigns under the Lease shall, except as provided in Section 4.2 and Section 15.2 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated and no material provisions thereof shall be waived (except in accordance with its terms and as permitted by the Lease Assignment) without the prior written consent of the Vendor prior to the payment in full of the CSA Indebtedness.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. Owner To Discharge Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof and will promptly discharge any such lien, charge or security interest which arises, but the Owner shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The covenant set forth in Section 13.1 will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. All obligations of the Owner under this Article 13 are subject to the limitations contained in Article 23 hereof;

provided, however, that the Owner will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including all tax liens arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), which, if not paid or discharged, could become a lien, charge or security interest on the Equipment or any unit thereof or the Vendor's interest in the Lease and the payments to be made thereunder; but the Owner shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in or to the Lease and the payments to be made thereunder.

ARTICLE 14

INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Owner shall pay, and shall protect, indemnify and hold each Indemnified Person harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (other than Taxes which shall be limited as provided in Article 6 hereof) which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses, including without limitation reasonable attorneys' fees and expenses of any Indemnified Person, relating thereto) in any way relating to or arising or alleged to arise out of any Indemnified Matter (as defined in Section 12.1 of the Lease); except that the Owner shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from any tort (including strict liability or products liability in contract or tort), breach of warranty or failure to perform any covenant hereunder of the Builder or is covered by the Builder's patent indemnification referred to in Section 14.4 hereof. The Owner shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, such Indemnified Person shall give prompt written notice thereof to the Owner and the Owner may and, upon such Indemnified Person's request, will at the Owner's expense assume control of and

resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner and reasonably approved by such Indemnified Person, and, in the event of any failure by the Owner to do so, the Owner shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In no event shall the Owner have any responsibility in connection with the settlement or other compromise of any Indemnified Matter effected without its prior written consent. In the event the Owner is required to make any payment under this Article 14, the Owner shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of any taxing jurisdiction, domestic or foreign (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as reasonably determined by the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner each agrees to give the other, promptly upon obtaining knowledge thereof, written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner, and provided that no event of default set forth in Section 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, the Owner shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Owner pursuant to this Section 14.1 shall be paid over to the Owner to the extent necessary to reimburse the Owner for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Owner Not Released if Equipment Damaged or Lost. The Owner will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any

damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Builder Warranties and Patent Indemnities. The agreement of the parties relating to the Builder's warranties, indemnities and other matters relating to the Equipment is set forth in the Purchase Order. Such agreement shall be for the benefit of the Owner and the Lessee and their respective successors and assigns, and shall continue in full force and effect in accordance with its terms notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15

ASSIGNMENTS

15.1. Assignment by Owner. The Owner will not, except as provided in Articles 7 and 12 hereof, transfer the right to possession of any unit of the Equipment. The Owner also will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or the Lease except that all, but not less than all, of the Owner's right, title and interest in and to this Agreement and the Lease (the "Assets") may be assigned, conveyed or transferred (whether by way of a transfer of the Assets by the Owner or, if the Assets shall have been transferred to an affiliate of the Owner in accordance herewith, by way of transfer of the shares of such affiliate) to (a) any bank, savings institution or trust company having a combined capital and surplus of at least \$75,000,000, (b) any corporation having a net worth of at least \$75,000,000 or (c) any affiliate of the Owner, provided in each case that the transferee is not itself and is not affiliated with a utility operating within the service territory of the Lessee or its affiliates; and provided, further, in the case of the transfer of the shares of an affiliate of the Owner as aforesaid (which does not qualify under clause (b)), the transferee of such shares shall have executed and delivered to the Investor a written guarantee pursuant to which such transferee shall have absolutely and unconditionally guaranteed the obligations of such entity, unless the Investor shall have waived such guarantee in writing. In the case of a transfer to an affiliate of the Owner in accordance with clause (c) (which does not qualify under clause (b)) of the immediately preceding sentence, the Owner shall remain liable for the obligations of the transferee unless the Investor shall have consented in writing to such transfer and agreed to release the Owner. In the event of any such assignment, conveyance or transfer the transferee shall agree to be bound by and assume all the terms of and will undertake all of the obligations of its predecessor Owner contained in this Agreement, the Lease, the Lease Assignment and the Participation Agreement in such manner as is satisfactory to the Vendor and the Lessee. No such assignment, conveyance or

transfer shall be permitted if it would violate any provision of law or regulation or create a relationship which would be in violation thereof. Upon any such disposition by the Owner to the transferee as above provided, such transferee shall be deemed an "Owner" for all purposes of this Agreement, the Lease, the Lease Assignment and the Participation Agreement, and shall be deemed to have made all the payments previously made by the Owner making such assignment, conveyance or transfer, and each reference herein to the Owner shall thereafter be deemed a reference to such transferee.

15.2. Assignment by Vendor. Subject to Section 5 of the Participation Agreement, any and all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time, provided that the indemnity or other obligations of the Lessee under its Documents shall not be increased by reason of any such assignment. Notwithstanding any other provision hereof or otherwise, the Investor shall not, without prior written consent of the Lessee and the Owner, assign any of its interest in the CSA Indebtedness other than to a single transferee of the Investor's entire interest in the transactions contemplated hereby. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Articles 2 and 14 hereof or relieve the Owner of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2, either the assignor or the assignee shall give written notice to the Owner and the Lessee, together with a counterpart or copy of such assignment, stating the identity and address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, security title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner of the notification of any such assignment, all payments thereafter to be made by the Owner under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. Registered Owner. The Owner shall maintain a register of the name and address of each subsequent assignee of this Agreement and the principal amount of the CSA Indebtedness allocable to such assignee and shall deliver a copy of such register and all amendments thereto to the Lessee. The name and

address of the Investor and any subsequent assignee of this Agreement shall be registered by the Owner upon the written request of the then registered owner of this Agreement which request shall also be provided to the Lessee. The person in whose name this Agreement shall be registered shall be deemed and treated as the owner thereof for all purposes of this Agreement and neither the Owner nor the Lessee shall be affected by any notice to the contrary. Payment of or on account of the principal of, premium, if any, and interest on the CSA Indebtedness shall be made only to or upon the order in writing of such registered owner. For the purpose of any request, direction, consent or any other purpose hereunder, the Owner and the Lessee may deem and treat the registered owner of this Agreement as the owner thereof without production of this Agreement.

15.5. No Setoff Against CSA Indebtedness Upon Assignment. The Owner recognizes that this Agreement will be assigned to the Investor as provided in the CSA Assignment. The Owner expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Investor to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Owner arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner against and only against the Builder.

ARTICLE 16

DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

- (a) the Owner shall fail to pay or cause to be paid in full the principal of and interest on the CSA Indebtedness or any Casualty Value or Termination Value payment when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner) and such

default shall continue for five business days after receipt of written notice thereof by the Owner from the Vendor; provided, however, that any default under Section 16.1(e) which might be construed as a default under this Section 16.1(a) shall be construed as a default under Section 16.1(e); or

(b) the Owner or the Lessee shall, for more than 30 days after the Vendor shall have given notice in writing thereof, fail or refuse to comply with any other covenant, agreement, representation, warranty, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner), the Lease Assignment or any covenant, agreement, representation, warranty, term or provision of the Participation Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; provided, however, that the continuation of such a failure for more than 30 days after such written notice shall not constitute an event of default hereunder if (a) such failure is capable of being cured but cannot be cured within 30 days, (b) the Owner or the Lessee is diligently pursuing the cure of such failure, (c) such failure does not impair in any material respect the Owner's interest in the Equipment or the security interest of the Vendor hereunder and (d) such failure is cured within 120 days of the expiration of the initial 30 day cure period; or

(c) a petition for reorganization under any provision of Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Participation Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that all such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Owner or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner hereunder, under the Participation Agreement or under the Lease Assignment or of the Lessee under the Lease, under the Lease Assignment and the Lessee Consent or under the Participation Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions

or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Owner or the Lessee, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner or the Lessee, as the case may be, or for their respective property in connection with any such proceeding in such manner that all such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) any Event of Default under the Lease (other than in respect of Excluded Payments and Rights as defined in the Lease Assignment) shall have occurred and be continuing unless the Owner shall have cured such Event of Default and the corresponding event of default hereunder within the later to occur of (1) the expiration of the applicable grace period hereunder, or (2) the tenth business day following the giving of written notice to the Owner that such Event of Default has occurred and is continuing; provided, however, that if more than eight Events of Default or if more than four consecutive Events of Default shall have occurred under clause (A) of Section 13.1 of the Lease which corresponds to an event of default under Section 16.1(a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate to the extent legally enforceable. In addition, subject to the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, if the Owner does not pay the entire unpaid CSA Indebtedness and interest thereon as aforesaid and all other sums then due hereunder (without premium) within 15 days of such notice of Declaration of Default, the Vendor may cause the term of the Lease immediately upon such written notice to terminate (and the Owner acknowledges such right of the Vendor to terminate the term of the Lease) and the Vendor may exercise the other remedies provided in Article 17 hereof; provided, however,

that such termination shall not be in derogation of or impair the rights of the Owner or the Investor (under the Lease Assignment), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner or the Investor (under the Lease Assignment), as the case may be, to sue for and recover damages provided for in Section 13 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Section 4.8 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and all other sums then due hereunder (without premium) and to collect such judgment out of any income and proceeds from Equipment, wherever situated. The Owner shall promptly notify the Vendor and the Lessee of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, it is agreed by the Owner that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17

REMEDIES

17.1. Vendor May Take Possession of Equipment. Subject to the provisions of Section 16.1 hereof and the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notices, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be

located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause such units to be moved to the nearest interchange point or points as shall be directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to Section 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. The Owner hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, upon such notice and consent as hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner and the Lessee addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and the Owner consents thereto in writing, all the Owner's rights in the Equipment shall thereupon

terminate and all payments made by the Owner may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner; provided, further, that if the Owner does not consent to the retention of the Equipment or if the Lessee or any other person notified under the terms of this Section objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Owner's Right of Redemption. Subject to the provisions of Section 16.1 hereof and the Lessee's rights of possession, use and assignment under Sections 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon not less than 10 days' notice to the Owner, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner, the Lessee or any other party claiming from, through or under the Owner or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if prior to such sale and prior to the making of a contract for such sale, the Owner should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner. In the event of any such purchase by the Owner, the Vendor shall assign to the Owner any and all of the Vendor's rights against the Lessee for any costs and expenses incurred in the Vendor's exercise of its remedies with respect to such Equipment. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of

the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Owner may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner shall be given written notice of such sale not less than 10 days prior thereto addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Owner to purchase or to provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. Upon the request of the Owner, the Vendor shall inform the Owner of the status of any proposed sale or other disposition of the Equipment. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner shall not otherwise alter or affect the Vendor's rights or the Owner's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Expenses. The Owner will pay all reasonable fees and expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this Section shall be subject to the limitations set forth in Section 4.8 and Article 23 hereof.

17.8. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

17.9. Limitations. Notwithstanding any provision hereof to the contrary, the Vendor agrees that, before it shall proceed to foreclose the lien of this Agreement, the Vendor shall, to the extent that it is then entitled to do so under the Lease and is not then stayed or otherwise prevented from doing so by operation of law or otherwise, first proceed to exercise one or more of the remedies provided in the Lease as it shall determine in its sole discretion, and if any such exercise of remedies under the Lease is stayed by Section 362 or 363 of the Bankruptcy Code, the Vendor shall refrain from exercising any remedy hereunder which would foreclose the lien of this Agreement until such stay of such remedy under the Lease shall be relieved pursuant to Section 1168 of the Bankruptcy Code or otherwise.

17.10. Deficiencies; Surplus. If, after applying all sums of money realized by the Vendor under the remedies herein provided or as a result of Payments received by the Vendor pursuant to the Lease Assignment, there shall remain any amount due to it under the provisions of this Agreement, the Owner shall, subject to the limitations of Section 4.8 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Owner shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of Section 4.8 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

The Owner will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303, and the Owner will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement, and the Owner will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Owner, its successors and assigns, as follows:

(a) that this Agreement is duly authorized, executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms;

(b) that at the time of delivery and acceptance of each unit of Equipment under this Agreement, assuming payment in full to the Builder for the units, Builder's right to assert any claim or lien against such units shall terminate, and the Builder will transfer good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature, except only claims, liens, security interests and other encumbrances arising from, through or under the Owner, the Investor or the Lessee, including but not limited to the rights of the Vendor under this Agreement, the rights of the Lessee under the Lease and the rights of the Investor under the CSA Assignment; and

(c) that it is not entering into this Agreement or any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

ARTICLE 21

ARTICLE AND SECTION HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Section Headings for Convenience Only. All Article and Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the respective rights of the Vendor and the Owner with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner.

ARTICLE 22

NOTICE

Any notice required or permitted to be given hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) to the Owner, at Four Embarcadero Center, Suite 1200, San Francisco, California 94111, Attention: Contract Administration - Leveraged;

(b) to the Builder, at its address specified in Item 1 of Annex A hereto;

(c) to the Lessee, as specified in Section 22 of the Lease; and

(d) to any assignee of the Vendor or the Owner, at such address as may have been furnished in writing to the Owner, or the Vendor, as the case may be, and to the Lessee by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties.

ARTICLE 23

NO RECOURSE AGAINST CERTAIN PERSONS; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Owner under Section 7.1, the first sentence of Section 7.2, Sections 17.2, 17.7 and 17.8 hereof and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed indefeasibly and irrevocably satisfied in full in all respects (except, in the case

of Article 13 hereof, as set forth in Section 13.3 thereof) and shall not be chargeable against the Owner in any circumstances whatsoever, including any voidness of any provision hereof, including this Section 23.2, upon the Lessee's execution and delivery of the Lease. The Owner shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed, they shall constitute the basis for a default pursuant to the terms hereof. Until the security interest of the Vendor is discharged as provided in Article 5 of this Agreement, no waiver or amendment of the Lessee's undertaking under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall be deemed to consent to any increase or decrease in the rentals or Casualty or Termination Values payable pursuant to Sections 3 and 7 of the Lease to the extent permitted by Section 3.1 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner hereunder, upon receipt of a certificate of the Owner certifying to the Vendor that such increase or decrease is in accordance with the provisions of Section 3.1 of the Lease and the adjusted amounts set forth in such agreement have not been reduced below those necessary to satisfy the obligations of the Owner hereunder.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Alabama; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Investor pursuant to the CSA Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. The counterpart delivered to the Investor shall be marked "Original" and all other counterparts shall be marked "Duplicate - See Article 25." Although this Agreement is dated, for convenience, as of the

date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

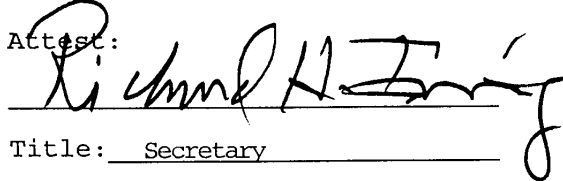
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY

By: 

Title: Vice President-Finance

[Corporate Seal]

Attest: 

Title: Secretary

BA LEASING & CAPITAL CORPORATION

By: _____

Title: Vice President

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY

By: _____

Title: _____

[Corporate Seal]

Attest: _____

Title: _____

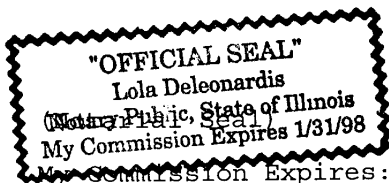
BA LEASING & CAPITAL CORPORATION

By: Philip L. Kitzler

Title: Vice President

STATE OF ILLINOIS)
) ss.:
COUNTY OF DuPage)

On this 31st day of October, 1994, before me personally appeared James S. Yerbic, to me personally known, who, being by me duly sworn, says that he is a Vice President-Finance of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Lola Deleonardis
Notary Public

1/31/98

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this ____ day of October, 1994, before me personally appeared Philip M. Litchenstein, to me personally known, who, being by me duly sworn, says that he is a Vice President of BA LEASING & CAPITAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(Notarial Seal)

My Commission Expires:

STATE OF ILLINOIS)
) ss.:
COUNTY OF _____)

On this ____ day of October, 1994, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(Notarial Seal)

My Commission Expires:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

On October 27, 1994 before me, Susan A. Scaletti
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Philip M. Litchenstein
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC SIGNATURE (SEAL)

OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT _____
DATE OF DOCUMENT _____ NUMBER OF PAGES _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

Schedule I to Conditional Sale Agreement
Amortization of CSA Indebtedness

<u>Date</u>	<u>Debt Service</u>	<u>Interest</u>	<u>Principal</u>	<u>Balance</u>
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ANNEX A

TO

CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: Thrall Car Manufacturing Company, an Illinois corporation, 2521 State Street, Chicago Heights, Illinois 60411.
- Item 2: The Equipment shall be settled for in no more than two Groups, unless the parties hereto shall otherwise agree.
- Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$14,062,000.
- Item 4: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$9,710,124.59.

ANNEX B

TO

Conditional Sale Agreement

Units of Railroad Equipment

Type	AAR Mechanical Designation	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Unit Base Price**	Total Base Price*	Estimated Time and Place of Delivery _____, 1994 - December 15, 1994, at Builder's Plant
116-ton Aluminum Coal Hopper Cars	HTS	Cartersville, Georgia	250 Units	JHMX 94001- 94250	\$55,250	\$13,812,500	
Carsets of Fabricated Car Parts	----		10 Carsets		\$24,950	\$249,500	

**Includes prepaid freight, storage and inspection costs payable to the Builder.

ANNEX E TO
CONDITIONAL SALE AGREEMENT
CERTIFICATE OF ACCEPTANCE

BA LEASING & CAPITAL CORPORATION ("Owner")

ALABAMA POWER COMPANY ("Lessee")

The undersigned, the duly authorized representative of the Owner and the Lessee, does hereby certify that:

Under authority and on behalf of the Owner and the Lessee, I have inspected and accepted delivery of, at the place and on the date set forth below, the following described Units of Railroad Equipment ("Units"), as conforming to the specifications and other requirements of that certain Conditional Sale Agreement, dated as of October 15, 1994 (the "CSA"), between THRALL CAR MANUFACTURING COMPANY and the Owner (certain of the Builder's rights therein having been assigned to the Investor under a certain Agreement and Assignment, dated as of said date):

<u>Number of Units</u>	<u>Description</u>	<u>*Lessee Road Numbers</u>
	116-ton Aluminum Coal Hopper Cars Manufactured by Thrall Car Manufacturing Company	
	Carsets of Fabricated Car Parts	

Any interim use agreement related to the above Units has been terminated with respect to such Units and there are no rights, duties or liabilities under any such agreement surviving its termination.

*I further certify that there was plainly, distinctly, permanently and conspicuously marked on each side of each such Unit, at the time of its acceptance, in letters not less than one inch in height, the words:

"SUBJECT TO A SECURITY AGREEMENT FILED WITH THE
INTERSTATE COMMERCE COMMISSION"

This Certificate is being delivered pursuant to Section 3.4 of the CSA and Section 2 of that certain Lease of Railroad Equipment, dated as of said date, between the Lessee and the Owner and is

subject in all respects to the terms and conditions of both such agreements.

Authorized Representative

Inspected and delivery accepted at Cartersville, Georgia
this ____ day of _____, 1994.

*Applicable only to coal hopper cars.